

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
*Richmond Division***

**JOSEPH J. DICK, JR.,**

**Petitioner,**

**v.**

**CIVIL ACTION NO: 3:10cv00505**

**HELEN FAHEY, CHAIRPERSON,  
OF THE VIRGINIA PAROLE BOARD,<sup>1</sup>**

**Respondent.**

**RESPONSE TO PETITIONER'S REPORT**

The respondent, by counsel, responds to the petitioner's status report, filed October 19, 2011, and his report concerning a proposed course of action, filed November 17, 2011. (Docket Nos. 17 and 18).

**HISTORY OF THE CASE**

1. On July 23, 2010, the petitioner filed his petition for a writ of habeas corpus in this Court.<sup>2</sup> On the same date, Dick filed a motion to stay the instant federal habeas corpus proceeding and asked the Court to hold it in abeyance pending his exhaustion of available state remedies. The respondent filed an objection to this motion on August 5, 2010, and the petitioner replied thereto on August 9, 2010.

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<sup>1</sup> Helen Fahey has retired as Chairperson of the Virginia Parole Board. William W. Muse is the current Parole Board Chair.

<sup>2</sup> Pursuant to a conditional pardon issued by Governor Timothy Kaine on August 6, 2009, the petitioner is required to report to an assigned probation and parole office. He has stated in prior pleadings that he resides in Maryland.

2. Contemporaneous to the petitioner's motion to stay the instant proceeding, he sought habeas corpus relief in the Norfolk Circuit Court. After the filing of extensive pleadings by the parties, in an order entered February 28, 2011, the circuit court denied and dismissed Dick's petition for writ of habeas corpus, finding the petition was barred by Virginia's habeas corpus statute of limitations, Virginia Code §8.01-654(A)(2).<sup>3</sup> (Record No. CL10-5111). The petitioner appealed the circuit court's habeas judgment to the Supreme Court of Virginia and the respondent filed a brief in opposition to the petition.

3. On June 14, 2011, this Court granted the petitioner's motion to stay the proceeding in this Court. (Docket No. 12).

4. Dick's state petition for appeal to the Supreme Court of Virginia was refused by that Court by order entered on September 19, 2011. (Record No. 110986).

#### **PETITIONER'S STATUS REPORT AND PROPOSED COURSE OF ACTION**

5. In his status report of October 19, 2011, the petitioner asked this Court to schedule a status conference in December 2011 for the purpose of considering a proposed course of action for his habeas corpus case. In his "Report Concerning a Proposed Course of Action," filed November 17, 2011, the petitioner asked the Court to hold a status conference and to adopt a course of action to include a schedule for discovery, a determination of the timeliness of the claims, and ultimately to hold an evidentiary hearing.

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<sup>3</sup> The circuit court incorporated into the denial order opinion letters it issued.

**THIS COURT SHOULD DETERMINE THE TIMELINESS OF THE PETITIONER'S CLAIMS AND OTHER PROCEDURAL DEFENSES PRIOR TO THE INSTITUTION OF A DISCOVERY SCHEDULE OR ANY MERITS CONSIDERATION.**

6. Consistent with this Court's Order of February 19, 2010, in *Danial J. Williams v. Helen Fahey, Chairperson of the Virginia Parole Board*, Civil Action No. 3:09cv00769, the respondent suggests the Court enter an Order directing the respondent to file a motion to dismiss, raising statute of limitations or other procedural defenses to the habeas petition, before any discovery schedule is established or merits response is required. The establishment of a schedule for discovery or response on the merits would be premature in advance of a determination of timeliness and/or procedural defaults.

7. Should the Court determine that a status conference is necessary, the respondent respectfully requests the Court to direct counsel for the parties to determine agreeable dates for such conference.

The respondent awaits further Order of this Court.

Respectfully submitted,  
Chairperson of the Virginia Parole Board,  
Respondent herein.

By: s/Virginia B. Theisen  
Counsel

Virginia B. Theisen  
Senior Assistant Attorney General  
Virginia State Bar No. 23782  
Attorney for the Respondent  
OFFICE OF THE ATTORNEY GENERAL  
900 East Main Street  
Richmond, Virginia 23219  
(804) 786-2071 phone  
(804) 371-0151 fax  
[vtheisen@oag.state.va.us](mailto:vtheisen@oag.state.va.us)

CERTIFICATE OF SERVICE

On December 2, 2011, I electronically filed this Response to Petitioner's Report with the Clerk of the Court by using the CM/ECF system, which will then send a notification of such filing (NEF) to the following: Harmony Loube, Esquire, HOLLAND & KNIGHT (LLP), 31 West 52<sup>nd</sup> Street, New York, NY, 10019, and Rebecca A. Worthington, Esquire, SQUIRE, SANDERS & DEMPSEY (US), LLP, 1200 19<sup>th</sup> Street, NW, Suite 300, Washington, DC 20036, counsel for the petitioner.

By: s/Virginia B. Theisen  
Counsel

Virginia B. Theisen  
Senior Assistant Attorney General  
Virginia State Bar No. 23782  
Attorney for the Respondent  
OFFICE OF THE ATTORNEY GENERAL  
900 East Main Street  
Richmond, Virginia 23219  
(804) 786-2071 phone  
(804) 371-0151 fax  
[vtheisen@oag.state.va.us](mailto:vtheisen@oag.state.va.us)